IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1988 OF 1986

WITH

WRIT PETITIONS NOS. 1989, 1990, 1991, 1992,

1994, 1995, 2070 AND 2071 OF 1986

Bajirao Jaisingrao Ghadage,
legal heir of Smt. Saraswati
w/o Kedarrao Ghadage, etc.,etc. ... Petitioners

versus

Rajaram Yeshwant Chougule,
etc., etc. ... Respondents

...

Mr. A.H. Palekar and Mr. S.G. Karandikar, for the Petitioners, amicus curiae.

Mr. A.A. Kumbhakoni, for the Respondents.

...

CORAM : A.M.KHANWILKAR,J.

6th JUNE 2005

ORAL JUDGMENT :

01. This Common Judgment will dispose of all

the companion writ petitions, for the question involved is common between the parties. The Respondent in the respective writ petition claim to be permanent tenants in respect of the land occupied by them, which were originally Inam land of Class V. Inam was abolished and the land came to be regranted to the predecessor of the Petitioner prior to Tillers' Day, i.e., 1st April 1957. In other words, the predecessor of the Petitioner, Smt. Saraswatibai wife of Kedarrao Ghadage, was the occupant landlady of suit land and was widow on the Tillers' Day, who, later on, died in the year 1975. As the predecessor of the Petitioner was widow on the Tillers' Day, the proceedings in respect of the suit lands under section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Act"), which had commenced before the A.L.T.-1, Tasgaon, were postponed on 8th May 1961. Accordingly, after the death of predecessor of the Petitioner, the landlady, proceedings under section 32F of the Act were commenced. The Additional Tahsildar and A.L.T.-1, Tasgaon, by his judgment and order dated 31st May 1982 took the view that the

Respondents-Tenants had failed to exercise right of purchase within the specified time by giving notice to the landlady in terms of section 32F of the Act, for which reason, sale of suit lands in their favour had become ineffective. This view found favour with the appellate authority, where the Respondent in the respective writ petitions, had preferred appeals, before the Sub-Divisional Officer. The appellate authority dismissed the appeals preferred by the said Respondents by common judgment dated 25th November 1983. Against this decision, the Respondent in the respective writ petitions preferred revision application before the Maharashtra Revenue Tribunal, which was, however, allowed by judgment and order dated 30th April 1985 by the Tribunal. The Tribunal, in substance, held that section 32F of the Act has no application to the case on hand. It has found that as the Respondent in the respective writ petitions were permanent tenants in the suit lands, they would become purchasers on the Tillers' Day , i.e., 1st April 1957, irrespective of whether the landlady was widow on the relevant date. It is held that section 32F of the Act applies only in cases where the

landlord/landlady is entitled to terminate the tenancy under section 31 of the Act. Insofar as the permanent tenants are concerned, section 31 of the Act cannot be invoked by the landlord or the landlady, as the case be, in view of express provision to exclude the application of section 31 to such tenants (permanent tenants). Accordingly, the Tribunal found that as section 32F of the Act has no application, the fact that the Respondents had failed to send intimation to the landlord within the specified time as provided in the said provision will make no difference. On the other hand, the Respondents will have to be held to have become deemed purchasers on the Tillers' Day, 1st April 1957, by virtue of section 32 of the Act. Taking this view of the matter, the Tribunal, while allowing the revision application and setting aside the orders passed by the two Courts below, remanded the matter to the Trial Court for fixing purchase price of the suit lands under section 32G of the Act as on 1st April 1957. This decision is the subject-matter of challenge in the present petitions.

02. The core issue that needs to be addressed in the present matter is : Whether section 32F of the Act has application to lands held by permanent tenants.

03. These petitions were originally filed by Mr. D.R. Ajgaonkar, ADvocate, on instructions of the High Court Legal Services Committee, Mumbai. When the petitions were taken up for hearing on June 8, 2004, Mr. Ajgaonkar informed that he has conveyed his inability to appear in the matters to the High Court Legal Services Committee as back as in 2000, but no arrangement was made. In the circumstances, hearing of petitions was deferred. In the meantime, Mr. A.H. Palekar was requested to appear, so as to espouse the cause of the Petitioners. In addition to Mr. Palekar, Mr. S.G. Karandikar also addressed the Court as amicus curiae. According to the Counsel espousing the cause of the Petitioners, the view taken by the Tribunal was inappropriate. It was, however, submitted that the Tribunal has completely glossed over the purport of section 32F of the Act, which opens with non-obstante clause and overrides the

provisions of preceding sections of the Act. It was submitted that section 32F of the Act makes no distinction between an ordinary tenant and a permanent tenant, whereas refers to tenant generally. It was argued that expression "Tenant" has been defined in section 2(18) of the Act, which includes a "permanent tenant" as defined in section 2(10A) of the Act. It was argued that the fact that remedy under section 31 of the Act is not available to the landlord against the permanent tenant was not the decisive factor, but the provision of section 32F(1)(a) of the Act, which we are concerned, has been introduced to protect the right of the landlord, who was minor, widow or a disabled person on the Tillers' Day. It was argued that if the construction putforth by the Tribunal and as canvassed by the Respondents was to be accepted, that would result in re-writing of the provision such as section 32F of the Act which was impermissible. It was argued that any other construction would result in whittling down the mandate of section 32F of the Act. To support the argument about the scope of section 32F of the Act, reliance was placed on the decisions of

the Apex Court reported in A.I.R. 1995 S.C. 2164 in the case of Anna Bhau Magdum (since deceased by L.R's) v. Babasaheb Anandrao Desai; and in A.I.R. 1965 S.C. 1457 in the case of Patel Chunibhai Dajibha, etc. v. Narayanrao Khanderao Jambekar and another. Reliance was also placed on the decision of Full Bench of our High Court reported in 1971 (Vol.Lxxiii) Bom.L.R. 792 in the case of Vishnu Shantaram Desai v. Smt. Indira Anant Patkar and in the case of Ramchandra Anant Joshi v. Janardan Tulshiram Ghuge, (1962) LXIV Bom.L.R. 635.

04. Mr. Kumbhakoni for the Respondents, on the other hand, adopts the opinion recorded by the Tribunal as his argument. According to him, although section 32F of the Act opens with non-obstante clause, however, the non-obstante clause will have to be given contextual meaning. To support the argument that the provision should be interpreted by giving contextual meaning, reliance is placed on the decisions of the Apex Court reported in (1980) 1 S.C.C. 321 (para 24) in the case of K. Balakrishna Rao and others v. Haji Abdulla Sait and others and reported in

A.I.R. 1960 S.C. 610 (para 9) in the case of The State of Bombay and others v. The Hospital Mazdoor Sabha and others; as well as the meaning of expression "Noscitur a sociis" and "Nosuntur a sociis" as occurring in Law Lexicon. Mr. Kumbhakoni has placed great emphasis on the Division Bench decision of our High Court in the case of Nago Dattu Mahajan v. Smt. Yeshodabai Huna Mahajan, reported in 1975 (Vol.LXXVIII) 427. According to him, though this decision does not directly deal with the question as to whether the provision of section 32F of the Act can be invoked in relation to lands held by permanent tenants, however, as this judgment has construed the purport of section 32F of the Act, observations contained in this judgment will have to be reckoned. He has then placed reliance on the observations in paras 19 and 11 in the case of Patel Chunibhai Dajibha (supra) to support his argument that if section 31 of the Act is unavailable, it necessarily follows that section 32F(1)(a) of the Act will be inapplicable. Mr. Kumbhakoni contends that the construction which he proposes to putforth on section 32F of the Act does not involve re-writing of the section as

such, but it is one of application of the said section to situation covered by the said provision. According to him, even if section 32F of the Act refers to tenant generally, which would ordinarily include "permanent tenant", even so, the said provision would be attracted only if remedy of claiming possession of the land is available to such landlord under section 31 of the Act and not otherwise.

05. Mr. Karandikar, who had appeared as amicus curiae, invited my attention to various provisions of the Act to point out that the Act makes distinction between the permanent tenant and other tenants as can be discerned from different provisions thereof. According to him, section 32F, however, makes no distinction between permanent tenant and other class of tenants, whereas refers to tenant generally and if it is so, it will be improper to exclude application of section 32F of the Act in respect of permanent tenants merely because action under section 31 of the Act is unavailable to the landlord in case of permanent tenant.

06. Before I consider the rival submissions, it will be necessary to advert to relevant provisions of the Act. Section 2(10A) of the Act defines "permanent tenant", which reads thus :

> "'permanent tenant' means a person-
>
> (a) who immediately before the commencement of the Bombay Tenancy and Agricultural Lands ((Amendment) Act, 1955 (hereinafter called "the Amending Act, 1955"),--
>
> (i) holds land as mulgenidar or mirasdar; or
>
> (ii) by custom, agreement, or the decree or order of a Court holds the land on lease permanently; or
>
> (b) the commencement or duration of whose tenancy cannot satisfactorily be proved by reason of antiquity;
>
> and includes a tenant whose name or the name of whose predecessor-in-title has been entered in the record of rights or in any public record or in any other revenue record as a permanent tenant immediately before the commencement of the Amending Act, 1955;"

Section 2(18) of the Act defines "tenant", which reads thus :

> "'tenant' means a person who holds land on lease and include,-

(a) a person who is deemed to be a tenant under section 4;

(b) a person who is a protected tenant; and

(c) a person who is a permanent tenant;

and the word 'landlord' shall be construed accordingly;"

Section 14 of the Act provides for termination of tenancy for default of tenant. However, sub-section (2) of the said provision expressly excludes the application of section 14(1) in respect of tenancy of any land held by the permanent tenant unless by the conditions of such tenancy, the tenancy is liable to be terminated on any of the grounds mentioned in sub-section (1) of section 14. Section 27 and section 30 of the Act preserve the existing rights of a permanent tenant. Although sub-division, sub-letting and assignment is prohibited by section 27 of the Act by inserting proviso to sub-section (1), it is amply made clear by the Legislature that nothing in the said sub-section shall prejudicially affect the rights of a permanent tenant. Section 31 of the Act provides for landlord's right to terminate tenancy for

personal cultivation and non-agricultural purpose. However, sub-section (1) expressly provides that the said rights are available to landlords, except against the permanent tenants. In other words, on plain reading of section 31 of the Act, it appears that remedy under that provision cannot be invoked by the landlord against the permanent tenant. Section 32 of the Act provides that on the First day of April 1957, every tenant, which includes a permanent tenant, be deemed to have purchased from his landlord free from all encumbrances subsisting thereon on the said day, the land held by him as tenant. In the present case, we are concerned with lands occupied by the Respondents as permanent tenants thereof and were under their personal cultivation at the relevant time, which category is governed by clause (a) of sub-section (1) of section 32. Indeed, the rights of the tenant under section 32 are subject to the other provisions of the Act. The provision which is pressed into service so as to contend that the rights of the Respondent in the respective writ petitions to purchase the suit land was defeated is with reference to failure to send intimation within the specified

time as provided for by section 32F of the Act. Accordingly, this judgment is confined to the question of application of section 32F of the Act to the case on hand. Section 32F of the Act reads thus :

> "32F. Right of tenant to purchase where landlord is minor, etc.-
>
> (1) Notwithstanding anything contained in the preceding sections, --
>
> (a) where the landlord is a minor, or a widow, or a person subject to any mental or physical disability the tenant shall have the right to purchase such land under section 32 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy under section 31 and for enabling the tenant to exercise the right of purchase, the landlord shall send an intimation to the tenant of the fact that he has attained majority, before the expiry of the period during which such landlord is entitled to terminate the tenancy under section 31:
>
> Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in this sub-section unless before the 31st day of March 1958 the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry is satisfied that the share of such person in the land is separated, having regard to the area, assessment, classification and value of the land, in the same proportion as the

share of that person in the entire joint family property and not in a larger proportion.

(b) where the tenant is a minor, or a widow, or a person subject to any mental or physical disability or a serving member of the armed forces, then subject to the provisions of clause (a), the right to purchase land under section 32 may be exercised, --

(i) by the minor within one year from the date on which he attains majority;

(ii) by the successor-in-title of the widow within one year from the date on which her interest in the land ceases to exist;

(iii) within one year from the date on which the mental or physical disability of the tenant ceases to exist;

(iv) within one year from the date on which the tenant ceases to be a serving member of the armed forces:

Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in this sub-section unless before the 31st day of March 1958 the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry is satisfied that the share of such person in the land is separated, having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property, and not in a larger proportion.

(1A) A tenant desirous of exercising the right conferred on him under sub-section (1) shall give an intimation in that

> behalf to the landlord and the Tribunal in the prescribed manner within the period specified in that sub-section:
>
> Provided that, if a tenant holding land from a landlord (who was a minor and has attained majority before the commencement of the Tenancy and Agricultural Land Laws (Amendment) Act, 1969) has not given intimation as required by this sub-section but being in possession of the land on such commencement is desirous of exercising the right conferred upon him under sub-section (1), he may give such intimation within a period of two years from the commencement of that Act.
>
> (2) The provisions of sections 32 to 32E (both inclusive) and sections 32G to 32R (both inclusive) shall, so far as may be applicable, apply to such purchase."

The constitutional validity of this section was challenged as back as in 1968 and has been upheld by the Division Bench of our High Court in the case Bapu Dnyanu v. Sadashiv Ramchandra reported in 1968 (LXXI) Bom. L.R. 402. The interpretation of section 32F of the Act has been considered in various judgments which are pressed into service on behalf of the parties. Indeed, in the case of Anna Bhau Magdum (supra), the Apex Court considered purport of section 32F of the Act. However, the nature of controversy before the Apex Court as in any other decision referred to was very limited. The Apex Court was required

to consider whether the tenant was entitled to avail the right conferred under the Act to purchase the land held by him in the fact situation of that case. The Court while considering that aspect of the matter has noted that the right of the tenant covered by section 32F of the Act is not automatic purchase of the land held by him, but subject to compliance of requirements under section 32F of the Act. However, the decision of the Apex Court referred to above did not directly deal with the question which arises for consideration in the present set of cases. There, the Court was not concerned with the rights and obligations of the permanent tenant and his landlord. In fact, there is no direct decision which deals with the said question posed in the present cases. However, in my opinion, the nearest judgment on the point is the opinion expressed by the Division Bench of our High Court in the case of Nago Dattu Mahajan (supra). I am conscious of the fact that that case was not concerning the permanent tenant, but tenant generally. Even so, this decision will be of significance to resolve the issue posed before me as the Division Bench has had occasion to

consider the cases in which section 32F of the Act will have application or can be pressed into service. To that extent, the question to be answered is overlapping. The Division Bench on careful examination of section 32F of the Act has authoritatively held that provision of section 32F1(a) of the Act is closely connected with section 31 thereof, being almost a corollary thereof or a counterpart thereof. It has then observed that sections 31, 32 and 32F do reflect a well-knit scheme, each one being an integral part of the other. This legal position expounded by the Division Bench will have to be kept in mind while examining the question before me. In substance, the Division Bench has opined that section 32F of the Act can be invoked only in cases where remedy under section 31 was in existence in favour of the landlord at the relevant time so as to terminate the tenancy and resume the land. At page 431 of the Report, it has observed thus :

> " The wording of s. 32F(1)(a) also fortifies this view. This clause presupposes the continued existence of the title of the landlord to terminate

> the tenancy and resume land. It assumes that the period for availment of such claim has not expired. The contemplated postponement of the tenant's right of purchase under this clause is entirely based on the hypothesis that the landlord has not availed of such a right under s.31(1) and the right to resume still subsists even after the notified tillers' day, i.e., April 1, 1957. The entitlement of such a landlord to claim resumption after April 1, 1957, is the sine qua non for the postponement of the statutory right of purchase of his tenant under this section." (emphasis supplied)

In other words, the Division Bench of this Court has considered the expression "such landlord is entitled to terminate the tenancy under section 31" occurring in section 32F(1)(a) of the Act and has found that only where the landlord has subsisting right to terminate tenancy under section 31 of the Act, the rigours of section 32F of the Act will have application to such cases. Relying on this exposition, the Respondents would contend, and in my view rightly, that as undeniably remedy under section 31 of the Act is unavailable against the permanent tenant, applying the same logic, it will necessarily follow that the provisions of section 32F of the Act have no application so far as the permanent

tenants are concerned.

07. Insofar as the argument of the Petitioners that section 32F opens with non-obstante clause, I find substance in the submission canvassed on behalf of the Respondents that the non-obstante clause will have to be given contextual meaning. The non-obstante clause will come into play in cases which are covered by section 32F of the Act alone. This position is reinforced from the observations in the case of Nago Dattu Mahajan (supra). The similar contention was canvassed before the Division Bench to give natural meaning to non-obstante clause in section 32F(1) of the Act. However, that contention was negatived by the Division Bench by observing as follows :

> "Strong reliance was placed by Mr. Karandikar, learned advocate appearing for the respondent, on the non-obstante clause with which s.32F(1) opens. He contended that assuming any limits on the operation of this sub-section by reference to S.31(3) is not warranted. This contention, no doubt, is rendered attractive by the inclusion of all the 'preceding sections' within its sweep, presumably out of abundant precaution. This very width of the sweep, however, is

> enough to expose the fallacy underlying the contention, as very few of sections out of 1 to 32E can be considered to be relevant. Such sweeping exclusion can hardly shed any light on the contents included. The true import of the non-obstante clause has to be ascertained only by examining the context in the light of its object. So considered, this non-obstante clause would be found to have been aimed only at nullifying the automatic purchase by tenants of the disabled landlords' lands under the proviso to s. 32(1)(b) where lands held by them are liable to be resumed by such landlords during the extended period as provided in s. 31(3)." (emphasis supplied)

It is well-settled that section 32F of the Act does not create any additional right in favour of the tenant. The right is created under section 32 of the Act, which is, however, made subject to section 32F of the Act, if applicable. In the present case, as the Respondents are permanent tenants, and remedy under section 31 of the Act is unavailable to the landlady against them, section 32F of the Act will have no application. This is the view taken by the Tribunal, which finds support from the exposition of the Division Bench of our High Court in Nago Dattu Mahajan's case (supra).

08. As mentioned earlier, although in the case of Nago Dattu Mahajan (supra), the Division Bench was not concerned with the issue regarding application of section 32F of the Act as against the permanent tenants, however, the construction putforth by the Division Bench to the wordings of section 32F of the Act will have bearing and would bind me to follow the said dictum, so as to answer the issue on the principle underlying the said dictum against the Petitioners. For the view that I have taken, it is unnecessary to dwell into other aspects raised by the Counsel appearing for the parties. The decisions pressed into service on behalf of the Petitioners, as already mentioned earlier, do not deal with the issue as arises for my consideration. The case of Anna Bhau Magdum (supra), in the first place, dealt with the question whether the tenant in that case (not a permanent tenant) was entitled to avail the right conferred under the Act to purchase the land held by him. The issue that was required to be considered by the Apex Court was whether the purchase by the tenant was automatic purchase. The Apex Court has observed that as section 32F of the Act was attracted in

that case, the tenant was obliged to give intimation as required under the said provision and there can be no automatic purchase by the tenant of the land held by him. Failure to do so entailed in purchase becoming ineffective. However, in the present case, I have taken the view that section 32F of the Act has no application because the landlady had no right to terminate the tenancy of the Respondents, who are permanent tenants. This is so because section 31 itself expressly excludes application of that provision in case of permanent tenants. Even the other decisions pressed into service on behalf of the Petitioners, in my opinion, will be of no avail for the view that I have taken following the dictum of the Division Bench of our High Court in Nago Dattu Mahajan's case (supra). Viewed in this perspective, these petitions ought to fail, and instead, the opinion expressed by the Tribunal that section 32F was inapplicable to the case on hand will have to be upheld.

09. Accordingly, all these petitions fail and the same are dismissed. No order as to costs.

10. While parting, I would like to record word of appreciation for the able assistance given by the Counsel appearing for the parties, in particular Mr. Palekar and Mr. Karandikar, who appeared on request made by the Court as amicus curiae to espouse the cause of the Petitioners.

(A.M.KHANWILKAR,J.)